APPENDIX A—OPINIONS OF THE DISTRICT COURT

Oral Opinion, October 28, 1969

The Court [Curtis, J.]: Very well. I take it, then, the hearing has come to a completion.

First of all, I want to thank all those who have appeared as friends of the court. I have appreciated your comments and they have been very helpful.

I have, of course, had the benefit of all of the arguments of counsel for some time, and I have read them. My law clerk and I have done research which seems to have been necessitated here, so I must admit that I came into the hearing with a pretty fair idea of what the outcome of this case would probably be unless there were some suggestions made here today or some argument which I had not thoroughly considered.

Of course, as I stated this morning, I can only say again that it is very—well, first of all, before I commence that I should state that it is my intention to write an opinion and file a written opinion here which will cover the legal aspects of the case and which will be published and which all attorneys will understand so that they can understand my position.

I realize, though, that a lot of people have come a long way and there are a lot of people in the audience who have been asked to come here and appear. I feel that it might be wise for me to, since I know what I am going to do, speak informally and in a non-legalistic fashion so that you may better understand the problem that confronts this court and the conclusion to which the court has come.

I have already expressed my personal feelings about air pollution, the importance of the problem, and the urgency of its solution. I have already mentioned that it is a problem of Government and that it is the function of the Administration acting through various departments and agencies to initiate and to pursue a program of research and

development of its own and to acquire all possible knowledge in order that it may make its proper recommendations to Congress and Congress may pass the needed legislation in order that it may be informed to the point where it can set up effective administrative means for the regulation and control of these factors contributing to the problem.

Congress has a duty, too, that of making laws which are helpful and necessary. The courts have a function and that is to stand ready to assist at all times in the implementation of these administrative decisions.

It is our constitutional concept of Government that Government moves forward smoothly when our three branches of Government—the executive, the legislative and the judicial—each functions in its own sphere of authority. It is inappropriate for any one branch of Government to exercise the prerogative of another. It is elementary political science which I know we all know.

The Department of Justice, whom this court must assume is the representative of the people, has brought this action by way of an administrative decision made by the Department of Justice to fashion an action of this kind. They brought this action into this court alleging that the automobile manufacturers had engaged in a conspiracy to eliminate competition and asking as its sole remedy that the court enjoin the defendants from engaging in conduct consisting of a long series of acts enumerated in the complaint and thought by the Government to be a violation of the Antitrust Act.

Now, I am not going into the technical aspects of the Government's theory here. We only know from some of the intimations what its theory is. But it seemed quite clear to those who are knowledgeable in this field that the Government is proceeding on a somewhat novel theory, and it is one in which there has been no precise court decision. So, after having filed this action and after many months of

working where parties have worked together with technical advisers, they have negotiated and reached a settlement of this lawsuit upon terms and conditions which have been set forth in the proposed consent decree and which they now ask this court to approve.

In approaching this problem the court must move cautiously lest it override an administrative decision based upon matters of policy with which this court cannot properly interfere.

Consent decrees which result from informal negotiations between the Antitrust Division and defendants in these cases are numerous, and they are most always without exception ratified by the court with little or no change.

Under well-established law, this decree must be approved unless this court finds some legal defect in it such as its unenforceability according to its terms, or its failure to provide relief which is consistent with the complaint. It is the court's duty to protect the rights of persons who are not parties to the action and, of course, the decree should not be approved if it is contrary to the public interest.

After a careful review of the proposed decree and a reading of the voluminous opposition to it, and in light of the research which we have done and the hearing here today, it seems clear to me that the decree must be approved for the following reasons.

In the first place, the decree is legally enforceable on its face. I have heard no contention to the contrary.

Secondly, it is consistent with the prayer in the complaint, in spite of what has been said here. It is, as has been said, substantially consistent. The allegations with respect to prior antitrust violations is a necessary allegation and a necessary finding if this case were to go to judgment, but if it is not to go to judgment it does not become a necessary finding.

The prayer for such relief as may seem proper is a general catchall clause, as all attorneys know, and it means little if anything.

With those exceptions, the decree provides substantially, as near as I am able to tell, all of the benefits which the complaint seeks.

Thirdly, the decree does not prejudice the rights of treble damage claimants. It has been, of course, contended that the Government has the duty to bring this case to judgment so that treble damage claimants may have the benefit of its judgment as prima facie proof of liability in treble damage suits. The law does provide that treble damage claimants may use such a judgment as prima facie evidence of liability, but it also provides that cases of this kind may be settled without an admission of liability.

Congress did that for a very definite reason and that is for the reason, such as exists here, to permit a ready and definite conclusion to these cases without the long expense of a trial.

And as has been mentioned here, this is nothing unusual, this is done all the time. The Government settles between 70 and 75 percent of its antitrust cases in this fashion. If it didn't it would not have the personnel to run the office.

There is no authority to the effect that the Government has the duty to try any case merely for the purpose of aiding treble damage claimants in their individual suits. I have had none cited to me. As far as I know there is no such authority, and I see no basis to compel the Government here to do that.

The treble damage claimants are free to bring any kind of an action they wish. The State of California and the other States may bring any kind of an action which they can maintain without being affected in the least by the decree in this action.

Lastly, it appears to me that this decree is in the public interest for it gives the Government all the relief it could have gained if it had tried the case and won. It avoids a tremendous expenditure of taxpayers' money and the exhaustion of Antitrust Division manpower. And it brings immediate results.

If this case were to go to trial, although there has been some contention about it to the contrary, I think there is little doubt but what it would take between four and five years of discovery, preparation and trial of this case. The small amount of evidence which is now in the hands of the Department of Justice and was obtained through the Grand Jury investigation, I think, would be a small thimbleful of evidence in comparison with that which would be required if this were to go to judgment.

Furthermore, this decree brings an assured result. The thing that amazes me is that all of the opponents seem to assume with such assurance that if this case were tried the Government would win. Now there are many knowledgeable people who disagree with this.

It would seem to me it would be tragic if this court would refuse to sign the decree and compel the Government to go to trial only to lose the case, which would mean that the benefits of this decree, which are great, would be lost to the entire country forever, and it would help the treble damage claimants not a whit.

The proposed decree, for the reasons which I have enumerated, will be approved.

I have not mentioned all of the arguments that have been made here. There have been a lot of them made. It does not seem to me that the others need answering in view of my views as expressed here.

Now, I think it is plain that from what I have said that I shall deny all petitions of those wishing to intervene in this action as parties. I think it has not been seriously

urged and, if so, not convincingly so, that these petitioners are entitled to intervene as a matter of right. Almost all of those wishing to intervene are treble damage claimants—that is the basis of their contention that they intervene because of their treble damage claims—and the cases are very clear that the interest of treble damage claimants is not cognizable as an interest such as will entitle the claimant to intervene in an injunction action of this kind.

Rule 24(b) suggests that permissible intervention shall be allowed only where it will not delay or prejudice the adjudication of the rights of the original parties. Now, there can be no doubt but what permitting the intervenors here to become parties in this suit could do nothing but prejudice and delay and cause interminable confusion in handling the action which is now pending before this court.

The other intervenors, there are some who have other claims upon which they would base their right to intervene—they are varied, and I think each one can be answered from a substantive standpoint. But, in any event, none of them have been made timely, and they will be denied for the reason that they have not been timely made. To admit them at this time even though they have some legitimate cause for intervention would cause undue delay in the adjudication of this case.

Now, a lot has been said about the Grand Jury transcripts and the evidence there. I think there is a lot of misunderstanding, too. The mere fact that they have not been released, it is assumed by everybody to indicate that there is some mysterious amount of evidence in the hands of the Grand Jury that if ever released would be of great value to somebody, and the court is a part of a great conspiracy trying to keep this from being released.

It has been traditional in federal courts that Grand Jury proceedings be kept secret for at least two very apparent reasons. One is that the Grand Jury is permitted to delve into matters which but for public necessity would be an

invasion of privacy protected by the Constitution. Evidence so obtained must be kept secret in order to protect the innocent and must not be released unless a need therefor be shown of such a high order as would justify a court in overriding constitutional considerations.

A second reason for the secrecy is that witnesses appearing before the Grand Jury afford better cooperation and are more willing to testify with the knowledge that proceedings are secret.

Now, we have to clothe all Grand Jury proceedings with that aura if we are going to maintain a proper Grand Jury concept. The Supreme Court has been adamant that District Courts be very careful and be very reluctant to release Grand Jury transcripts of any kind in any case unless there is a need shown.

The order which has been prepared—and I have not had an opportunity to examine it carefully—but it is my intention to sign an order which—if this does not so provide, we will see that one does—will impound all of the testimony and all exhibits which have been presented to the Grand Jury so that they may not be destroyed or lost or dissipated. If these were to be released generally they would have to be released by the persons from whom they were obtained, and the only way they could be recovered would be by a subpoena. They would suffer the possibility of loss or destruction or mutilation. In order that this evidence be maintained and be available to treble damage claimants or anyone else who is interested in further litigation, all of this material will be impounded with the Department of Justice and will be available to any such claimant upon a proper showing.

Right now any request for the release of Grand Jury records will be premature. There has been no showing and there have been no arrangements made for their release.

But the details of the release and the conditions under which they can be released, I am sure, will be liberal enough to satisfy anybody who makes any reasonable demand.

That, I think, disposes of all motions to consolidate and the Grand Jury matter.

I did want to make one more comment. I have lost my notes, but I will make it anyway. In this case it has seemed to me—well, I just wanted to express again my appreciation in having all the members of the Bar here from various parts of the country who have appeared as friends of the court.

What I wanted to say at this point is—and I don't want to be misunderstood—it has been pretty clear to me ever since the issues were crystallized what the result would be. There have been some efforts made here by political interests, I feel, to make this court a useful court for their own purposes. This court as a result has been deluged with letters from good people, sincere people, throughout the United States who, I think, have been deluded to some extent as to the issues presented here. It is obviously an intent on the part of some politicians, I think, to divert the fire which—or, the heat which their own constituents have placed upon them and to attempt to exercise some pressure on this court. Now, pressure isn't new to a judge; we get used to it and simply ignore it. But this kind of pressure is not proper, and is inappropriate in a court of this kind where it is used in an attempt to influence the court to do something other than what the law requires them to do.

I resent the implication that this court is susceptible to that kind of influence. The decision I have come to is a decision which is based upon the law as I understand it to be, and I feel pretty certain that the decision which the court has reached is consistent with the law.

Thanks, all of you, for coming.

There being nothing further, the court stands adjourned.

Memorandum Opinion, November 7, 1969

[Caption Omitted]

This is an action brought by the United States of America charging that the defendants, Automobile Manufacturers Association, Inc.,; General Motors Corporation; Ford Motor Company; Chrysler Corporation; and American Motors Corporation have conspired with other motor vehicle manufacturers, in violation of § 1 of the Sherman Act (15 U.S.C. § 1), to eliminate competition in the research, development, manufacture and installation of motor vehicle air pollution control equipment, and in the purchase from others of patents and patent rights, covering such equipment. By way of relief, the plaintiff is seeking an order enjoining these defendants from continuing the alleged unlawful conduct.

After eight months of negotiation, the parties have agreed to settle this case upon terms and conditions embodied in the proposed consent decree now before this court for approval.

On September 11, 1969, the proposed decree was made public and all interested parties, including the State of California, County of Los Angeles, City of Los Angeles, and the Air Pollution Control District of the County of Los Angeles, were invited to express their views as to whether or not the consent decree should be approved. The United States reserved the right to withdraw from the stipulated judgment, however, at any time within thirty days after its submission in the event any objections brought to its attention might seem meritorious.

On October 28, 1969, after the thirty day period had expired, this court held an open hearing at which time all persons wishing to appear as amici curiae were permitted to voice their objections. Appearances have been made on behalf of many states, counties, cities, air pollution control districts, congressional groups, associations and interested individuals.

Petitions to intervene, as parties plaintiff, were filed by the County of Los Angeles; County of Santa Barbara; the Bay Area Air Pollution Control District; Air Pollution Control District of the County of Los Angeles; the State of New York; the State of Connecticut; the State of Maryland; the State of New Jersey; City of New York; American Civil Liberties Union; two aldermen from the City of Chicago; M. B. Grossman and S. J. Tamkin, plaintiffs in a class action now pending in this court; and William J. A. Sturtz. With the exception of petitioner Sturtz, all prospective intervenors sought intervention in order to assert treble damage claims.[1]

It has not been urged seriously, or if so, not convincingly, that these petitioners may intervene here as a matter of right, for it is well settled that treble damage claimants do not have an "interest" cognizable under Rule 24(a) F.R.Civ.P. in Government anti-trust actions seeking injunctive relief. *United States* v. *Blue Chip Stamp Company*, 272 F. Supp. 430 (C.D. Cal. 1967), aff'd sub nom. *Thrifty Shoppers Scrip Company* v. *United States*, 389 U.S. 580 (1968); *Commonwealth Edison Company* v. *Allis Chalmers Manufacturing Company*, 207 F. Supp. 252 (N.D. Ill. 1962) aff'd 315 F. 2d 564 (7th Cir. 1963); *United States* v. *Harper & Row Publishers, Inc.*, unreported opinion (N.D. Ill., E.D., Nov. 27, 1967), aff'd. sub nom., *City of New York* v. *United States*, 390 U.S. 715 (1968);[2] *United States* v. *Western Electric Co.*, 1968 CCH Trade Cases ¶ 72,415 (D. N.J., 1968), aff'd sub

---

[1] Petitioner Sturtz sought intervention to compel the defendants to buy his smog device, alleging their previous failure to do so constituted an anti-trust violation.

[2] Here the Supreme Court affirmed a denial of intervention in a consent decree proceeding where the states and municipalities were seeking virtually the same relief as is being sought here, including an "asphalt clause", access to grand jury records and a summary of evidence.

nom. *Clark Walker and Sons, Inc.* v. *United States*, 392 U.S. 659 (1968); *United States* v. *Minnesota Mining & Manufacturing Company*, unreported opinion (N.D. Ill. E.D. Sept. 2, 1969); *United States* v. *Aluminum Company of America*, 41 F.R.D. 342 aff'd per curiam sub nom. *Lupton Mfg. Co.* v. *United States*, 388 U.S. 457 (1967).[3]

It also seems clear that the intervenors are not entitled to permissive intervention. Rule 24(b) F.R.Civ.P. requires the court, in considering whether to allow permissive intervention, to consider whether the intervention will "unduly delay or prejudice the adjudication of the rights of the original parties."[4]

The main goal of the intervenors here is to block the proposed decree in the hopes of compelling the parties to litigate this case to judgment. A favorable judgment could then be used as a basis for their own treble damage actions. In the alternative, they are seeking the inclusion of an admission of liability, commonly called an

---

[3] But see *Cascade Natural Gas* v. *El Paso Natural Gas*, 386 U.S. 129 (1967). In this case, upon which intervenors heavily rely, the Supreme Court upheld intervention as a matter of right. But this was a case of divestiture in which the decree had a direct effect upon the intervenors. In any event, in the light of subsequent cases it now appears that that ruling is sui generis and must be limited to the facts of that case. *United States* v. *Western Electric Co.*, *supra*; *Hobson* v. *Hanson*, 44 F.R.D. 18 (D. D.C. 1968); 81 Harvard Law Review 356 at 406 (1967); *United States* v. *Aluminum Company of America*, *supra*; *Lupton Mfg. Co.* v. *United States*, *supra*; *United States* v. *Harper & Row Publishers, Inc.*, *supra*; *City of New York* v. *United States*, *supra*.

[4] Rule 24. Federal Rules of Civil Procedure.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) . . . or (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

"asphalt clause",[5] which would produce the same result. However, the defendants have made it clear that they would not consent to such a clause and if it were to be insisted upon, no settlement of the case would be possible.

To allow permissive intervention in this case would certainly delay and prejudice the adjudication of the original parties. Courts, generally, have consistently denied intervention under Rule 24 F.R.Civ.P. in Government anti-trust cases where the purpose is to defeat the entry of a consent decree. *United States* v. *Blue Chip Stamp Company, supra.*

All petitions for intervention should, therefore, be denied.

Prior to the institution of this action, the Government impaneled a grand jury to investigate charges that these defendants were engaging in anti-trust activities. After eighteen months, the grand jury was dismissed, without an indictment having been returned. However, during its investigation, a tremendous amount of evidentiary material was gathered together and reviewed and the testimony of many witnesses was obtained. It has been contended by many appearing here as amici curiae that the proposed decree should contain some provision releasing this material, as well as the transcript of the grand jury proceedings, from the cloak of secrecy tra-

---

[5] An "asphalt clause" gets its name from a group of antitrust cases against defendants engaged in the asphalt business, wherein a consent decree containing an admission of liability was approved. *United States* v. *Allied Chem. Corp.*, 1961 Trade Cas. ¶ 69,923, at 77,641 (D. Mass. 1960); *United States* v. *Bituminous Concrete Ass'n., Inc.*, 1960 Trade Cas. ¶ 69,878 at 77,487 (D. Mass.); *United States* v. *Lake Asphalt & Petroleum Co.*, 1960 Trade Cas. ¶ 69,835, at 77,272 (D. Mass.). So far as the court is aware, such a clause had never been used before and has never been used since. Furthermore, its value is doubtful, for insistence upon it would, for all practical purposes, eliminate the possibility of settling anti-trust cases.

ditionally surrounding such proceedings, in order that it might become available to treble damage claimants. At the hearing, a proposed order was presented to the court, to which all parties have agreed and which this court has signed, requiring that all evidence obtained by the grand jury, as well as its own transcript, be impounded in the hands of the Justice Department, where it may be obtained by treble damage claimants, or others, by subpoena or other appropriate means, where good cause therefor can be shown. This appears to satisfy those making this contention.

Let us now turn to a consideration of the proposed consent decree.

Section 5(a) of the Clayton Act, after providing that a final judgment or decree in an anti-trust action brought by the Government may be used with prima facie effect in treble damage actions, expressly excepts from these provisions consent decrees entered in such actions. In so doing, it implicitly recognizes consent decrees as a means of terminating civil anti-trust actions brought by the Government, and their use has become a most effective technique in anti-trust enforcement. It is reported that between 70 and 75 per cent of all such Government cases are settled in this manner, which allows the Government to obtain a large measure of injunctive relief without tremendous consumption of the limited manpower and financial resources available to the Anti-trust Division.

The decision to settle an anti-trust case in this fashion, like the decision to commence it in the first place, is an administrative decision and is a part of the implementation of the general policy of the Executive branch of government. As such, it is not subject to review by this court.

This court does have the power to disapprove the proposed settlement, but its use requires the exercise of

discretion, based upon legal, as distinguished from administrative, considerations. For instance, the court should withhold its approval if the decree be unenforceable or if it should provide for relief not consistent with the prayer of the complaint. The court may properly consider whether or not the rights of persons not parties to the action are jeopardized and whether the consent decree, on the whole, is against the public interest.

The proposed decree appears to be enforceable, and no contention to the contrary has been made. Furthermore, the relief which the decree provides is consistent with the prayer of the complaint.

It has been urged that the decree adversely affects the rights of treble damage claimants in this prosecution of their own claims. But, while it is true that the decree does not afford prima facie proof of liability, the rights of the claimants to prosecute their own claims is not otherwise affected. We know of no authority, and none has been brought to our attention, which would require the Government to prosecute this case to judgment solely for the purpose of aiding treble damage claimants. The Government is the designated representative of the public, and sound policy requires that it be free to conduct and control its litigation in the public interest. This objection to the decree is not valid.

It is strongly urged by many that the decree should be rejected as not being in the public interest. But no good reason appears to this court for finding this to be so. In the first place, it provides the Government with substantially all the relief that it could have obtained if it had tried the case and won. It avoids the tremendous expense of time and money which would be required of the Anti-trust Division in the event of a trial. The decree brings immediate results, whereas if this case were to be tried, any benefit of a final decree would be delayed many years. It brings an assured result. Those objecting

have all assumed that the Government would win the action if it were brought to trial. But the Government's case is based upon a novel and unadjudicated theory. Knowledgeable people disagree as to the final result. If the Government should try this case and lose, the benefits of the decree would be lost. For these reasons, it appears to the court that the proposed decree is in the public interest.

For the foregoing reasons, all petitions to intervene, as parties, are hereby denied and the proposed consent decree is hereby approved.

DATED: November 7, 1969.

/s/ JESSE W. CURTIS
Jesse W. Curtis
United States District Judge

APPENDIX B—STATUTES INVOLVED

Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), provides:

> A final judgment or decree heretofore or hereafter entered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws or by the United States under section 15a of this title, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken or to judgments or decrees entered in actions under section 15a of this title.

Rule 24 of the Federal Rules of Civil Procedure provides, in pertinent part:

> **(a) Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> **(b) Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

APPENDIX C—COMPLAINT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL No. 69-75-JWC

Filed: 1/10/69

UNITED STATES OF AMERICA, *Plaintiff*,

v.

AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.;
GENERAL MOTORS CORPORATION;
FORD MOTOR COMPANY;
CHRYSLER CORPORATION; and
AMERICAN MOTORS CORPORATION,
Defendants.

Complaint

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, as amended, (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act.

2. Each of the corporate defendants named herein transacts business and is found within the Central District of California.

II

Defendants

3. Automobile Manufacturers Association, Inc., a corporation organized and existing under the laws of the State of New York with its principal place of business in Detroit, Michigan, is made a defendant herein. Automobile Manufacturers Association, Inc., is a trade association whose membership consists mainly of firms engaged in the business of manufacturing and selling motor vehicles and component parts and accessories thereto in various states of the United States.

4. The Corporations named below are made defendants herein. Each of said corporations is organized and exists under the laws of the State indicated and has its principal place of business in the city indicated. Within the period of time covered by this complaint said defendants have primarily engaged in the business of manufacturing and selling motor vehicles in various states of the United States, and also manufacture and sell component parts and accessories thereto.

Defendant Corporation	*State of Incorporation*	*Principal Place of Business*
General Motors Corporation	Delaware	Detroit, Michigan
Ford Motor Company	Delaware	Dearborn, Michigan
Chrysler Corporation	Delaware	Highland Park, Michigan
American Motors Corporation	Maryland	Detroit, Michigan

5. Whenever in this complaint reference is made to any act, deed or transaction of a corporate defendant, such allegation shall be deemed to mean that said corporation engaged in said act, deed or transaction by or through its officers, directors, agents or employees while they were actively engaged in the management, direction or control of corporate business affairs.

III

Co-Conspirators

6. Each of the corporations listed below in this paragraph is not named a defendant herein but is named as a co-conspirator and has participated as a co-conspirator with the defendants in the offense hereinafter charged and has performed acts and made statements in furtherance thereof.

Corporation	*State of Incorporation*	*Principal Place of Business*
Checker Motor Corporation (successor to Checker Cab Manufacturing Corporation)	New Jersey	Kalamazoo, Michigan
Diamond T Motor Car Company	Illinois	Cleveland, Ohio
International Harvester Company (a consolidation of International Harvester Company, a New Jersey Corporation, and International Harvester Corporation, a Delaware Corporation)	Delaware	Chicago, Illinois
Studebaker Corporation (successor to Studebaker-Packard Corpoitation)	Michigan	South Bend, Indiana
White Motor Corporation (successor to The White Motor Company)	Ohio	Cleveland, Ohio
Kaiser-Jeep Corporation (successor to Willys Motors, Inc., a Pennsylvania Corporation)	Nevada	Oakland, California
Mack Trucks, Inc. (successor to Mack Manufacturing Corporation)	New York	New York

7. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the offense charged in this complaint and have performed acts and made statements in furtherance thereof.

IV

Definition

8. As used herein, the term "motor vehicle air pollution control equipment" means equipment, or any part thereof, designed for installation on a motor vehicle or any system

or engine modification on a motor vehicle which is designed to cause a reduction of pollutants emitted from the vehicle, including, but not limited to, any device for the control of emissions of pollutants from the exhaust system, the crankcase, the carburetor, or the fuel tank.

V

Trade and Commerce

9. Automobiles for the most part are manufactured in the State of Michigan and are shipped therefrom to each of the fifty states of the United States. Some automobiles are assembled in various states of the United States from parts manufactured in the State of Michigan and other states. In 1966, 78,315,000 passenger cars and 15,864,000 trucks and buses, exclusive of off-the-road vehicles, were registered in the United States. In that year, 8,604,712 passenger cars valued at more than $17½ billion and 1,791,587 commercial vehicles valued at more than $3.9 billion were produced in this country. Of the trucks produced, 96,560 were built with diesel motors.

10. The largest number of passenger cars registered and new cars sold in any state of the United States in 1966 was in the State of California where 7,621,792 cars were registered and 832,338 new cars sold. The largest number of passenger cars registered in any county of any state in the United States in 1966 was in Los Angeles County where 2,932,980 cars were registered. Similarly, in 1966 California accounted for the largest number of truck registrations and new truck sales with 1,542,984 trucks registered and 150,927 new trucks sold, and Los Angeles County accounted for the largest number of trucks registered, numbering 436,218.

11. Since at least 1952 it has been established that motor vehicles contribute to air pollution by the emission of hydrocarbons, carbon monoxide, oxides of nitrogen and other contaminants. For example, in Los Angeles County, as of January 1967, gasoline-powered motor vehicles

accounted for 12,465 tons out of a total of 14,610 tons, or 85.3% of contaminants emitted into the ambient air daily. As a result of new and continuing requirements that automotive vehicles be equipped with air pollution control devices, a large and growing market for the production and installation of such devices has developed. Motor vehicle air pollution control devices are shipped in interstate commerce either as engine or system modifications or as equipment attached to automobiles, which are shipped from Michigan and other states to each of the fifty states of the United States.

VI

Offense Alleged

12. Beginning at least as early as 1953, and continuing thereafter up to and including the date of this complaint, the defendants and co-conspirators have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in motor vehicle air pollution control equipment in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

13. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which have been and are:

(a) to eliminate all competition among themselves in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

(b) to eliminate competition in the purchase of patents and patent rights from other parties covering motor vehicle air pollution control equipment.

14. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and

conspired to do, including, among other things, the following:

(a) agreed that all industry efforts directed at the research, development, manufacture and installation of motor vehicle air pollution control equipment should be undertaken on a non-competitive basis;

(b) agreed to seek joint appraisal of patents and patent rights submitted to any of them by persons not parties to a cross-licensing agreement entered into on July 1, 1955, and amended and renewed periodically, and to require "most-favored-purchaser" treatment of all parties to the cross-licensing agreement if any one were licensed by a person not a party to that agreement;

(c) agreed to install motor vehicle air pollution control equipment only upon a uniform date determined by agreement, and subsequently agreed on at least three separate occasions to attempt to delay the installation of motor vehicle air pollution control equipment:

(1) in 1961 the defendants agreed among themselves to delay installation of "positive crankcase ventilation" on vehicles for sale outside of California until the model year 1963, despite the fact that this antipollution device could have been installed nationally for the model year 1962 and that at least some automobile manufacturers expressed willingness to do so, in the absence of a contrary industry-wide agreement;

(2) in late 1962 and extending into 1963, the defendants agreed among themselves to delay installation of an improvement to the positive crankcase ventilation device, an improvement which the California Motor Vehicle Pollution Control Board had indicated it would make mandatory;

(3) in early 1964 the defendants agreed among themselves to attempt to delay the introduction of

new exhaust pollution control measures on motor vehicles sold in California until the model year 1967; despite the fact that all were capable of installing the improvement for the model year 1966, the defendants agreed to tell California regulatory officials that installation of exhaust antipollution measures would be technologically impossible before 1967, and only under regulatory pressure made possible by competing device manufacturers not in the automotive industry did the defendants agree to a California regulatory requirement that exhaust devices be installed for the model year 1966; and

(d) agreed to restrict publicity relating to research and development efforts concerning the motor vehicle air pollution problem.

VII

Effects

15. The aforesaid combination and conspiracy has had, among others, the following effects:

(a) hindering and delaying the research, development, and manufacture both by the defendants and co-conspirators and by others not parties to the agreements alleged herein and the installation of motor vehicle air pollution control equipment;

(b) restricting and suppressing competition among the defendants and co-conspirators in the research, development, manufacture and installation of motor vehicle air pollution control equipment; and

(c) restricting and suppressing competition in the purchase of patents and patent rights covering motor vehicle air pollution control equipment.

Prayer

Wherefore, the plaintiff prays:

1. That the Court adjudge and decree that the defendants have engaged in a combination and conspiracy, in un-

reasonable restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act.

2. That each of the defendants named in this complaint, its successors, assignees and transferees, and the respective officers, directors, agents and employees thereof, and all persons acting or claiming to act on behalf thereof:

(a) be enjoined from continuing, maintaining or renewing, directly or indirectly, the combination or conspiracy hereinbefore alleged, or from engaging in any other practice, plan, program, or device having a similar effect;

(b) be enjoined from entering into any agreements, arrangements, understandings, plan or program with any other person, partnership or corporation, directly or indirectly:

(1) to delay installation of air pollution control equipment or otherwise restrain individual decisions as to installation dates;

(2) to restrict individual publicity of research and development relating to air pollution control technology;

(3) to require joint assessment of the value of patents or patent rights relating to air pollution control equipment;

(4) to require that acquisition of patent rights relating to air pollution technology be conditioned upon availability of such rights to others upon a most favored purchaser basis; or

(5) to respond jointly to requests by government regulatory agencies for information or proposals concerning air pollution control technology unless such agency requests a joint response in a particular case; and

(c) be required to issue to any applicant interested in developing motor vehicle air pollution technology, unrestricted, royalty-free licenses and production know-how under all United States patents owned, controlled or applied for to which the cross-licensing agreement dated July 1, 1955, as amended, has been applicable, and to make available to any such applicant all other know-how related to air pollution control technology which has been exchanged with any other defendant.

3. That the plaintiff have such other, further and different relief as the nature of the case may require and the Court may deem just and proper in the premises, including cancellation of the cross-licensing agreement dated July 1, 1955, as amended, and an injunction ensuring that all future joint arrangements relating to air pollution control technology be appropriately limited as to subject matter of joint effort and numbers of participants so as to maintain competition in the development of air pollution technology.

4. That the plaintiff recover the costs of this suit.

Ramsey Clark
Attorney General

Edwin M. Zimmerman
Assistant Attorney General

Baddia J. Rashid
Attorney, Department of Justice

Wm. Matthew Byrne, Jr.
United States Attorney

Raymond W. Phillipps

Charles L. Marinaccio

Attorneys, Department of Justice